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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte INGO GASSER

Appeal 2008-0199
Application 09/936,518
Technology Center 3600

Decided: June 12, 2008

Before WILLIAM F. PATE, III, JENNIFER D. BAHR, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ingo Gasser (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 18-40, which are the only claims pending in the application. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to "pull-out guide fittings for drawers or the like, including a drawer-side drawer track, a body-side support track and a center track running between these two tracks on both sides of the drawer." Specification 1, ¶ [0001]. Appellant's invention provides a damping device operating between at least two of the tracks. Specification 1, ¶ [0002].

Claim 18, the only independent claim involved in this appeal, reads as follows:

18. A pull-out guide fitting for a drawer,
comprising:
- a drawer track to be attached to a drawer;
 - a support track to be attached to a body
sidewall;
 - a center track arranged between said drawer
track and said support track;
 - rolling elements arranged between said
drawer track and said center track, and arranged
between said center track and said support track
for allowing a transfer of the drawer between an
open position and a closed position; and
 - a damping device operable to dampen a
relative motion between said center track and at
least one of said drawer track and said support
track.

The Rejections

The Examiner relies upon the following as evidence of unpatentability:

Röck	US 4,445,726	May 1, 1984
Tamura	GB 2 245 158 A	Jan. 2, 1992
Migliori	EP 0 556 613 A1	Aug. 25, 1993

Appellant seeks review of the Examiner's rejections under 35 U.S.C. § 103(a) of claims 18, 21-29, and 31-40 as unpatentable over Tamura in view of Röck and claims 19, 20, and 30 as unpatentable over Tamura in view of Röck and Migliori.

The Examiner provides reasoning in support of the rejections in the Answer (mailed March 14, 2006). Appellant presents opposing arguments in the Appeal Brief (filed December 6, 2005).

THE ISSUE

Appellant contends that neither Tamura nor Röck suggests a drawer pull-out guide fitting comprising “a *center track arranged with respect to a damping device* so as to be involved in a damping process.” Br. 4. (Emphasis original.) Therefore, the issue before us in this appeal is whether Appellant demonstrates the Examiner erred in determining that the particular arrangement recited in claim 18, namely, a drawer track, a support track, a center track, with rolling elements arranged between adjacent tracks, and “a damping device operable to dampen a relative motion between said center track and at least one of said drawer track and said support track,” would have been obvious in view of the combined teachings of Tamura and Röck.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such

that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). While the requirement of demonstrating a teaching, suggestion, or motivation (the TSM test established by the Court of Customs and Patent Appeals) to combine known elements in order to show that the combination is obvious may be “a helpful insight,” it cannot be used as a rigid and mandatory formula. *Id.* at 1741. While there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

“A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 1742.

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 1739.

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

Id. at 1742.

FINDINGS OF FACT

Tamura discloses a drawer mechanism comprising a pair of sliding rails 7 provided on drawer 2a, a pair of fixed rails 3 secured to the inner surfaces of side panels 1c of cabinet frame 1 in the front half areas of cabinet compartment 1b and extending approximately half the length of the compartment 1b, a pair of auxiliary fixed rails 3a secured to the inner surfaces of side panels 1c within the rear half of the compartment 1b, and damping mechanisms 12 geared to a rack 5 formed on each auxiliary fixed rail 3a to prevent the drawer 2a from closing abruptly (Tamura 6, 7, abstract, figs. 2, 3, 4, and 6). As illustrated in Figure 6, Tamura's sliding rails 7 are arranged to slide along fixed rails 3, with rolling elements, in the form of steel balls 8, arranged between the fixed rails 3 and sliding rails 7 (Tamura 7).

Tamura's damping elements are disposed within traveler devices 9, which are slidably mounted on auxiliary fixed rails 3a for movement via engagement of pinions 16 with racks 5. Each damping device comprises a rotary cylinder 12 spaced from a cylindrical portion 13 of main body 9a of traveler device 9, with the space filled with a highly viscous fluid a. When the drawer 2a is pushed back into the compartment 1b, a pin 7b of each sliding rail 7 eventually engages a radial extension 27 of recess 25 of catch 22 of each traveler device 9, such that the movement of the drawer 2a is imparted to the traveler device 9. The movement of pinion 16 of each traveler device 9 is transmitted to a movable cylinder 15 and rotary cylinder 12 "to generate in the highly viscous fluid [a] a viscous shearing drag, which acts as a braking force applied to the traveler device 9 when it is returned to compartment 1b." Tamura 8, 10, and 14, and figs. 4 and 5. Tamura's

damping elements thus are configured and arranged so as to damp relative motion between the sliding rails 7 secured to drawer 2a and the fixed rails, i.e., fixed rails 3 and auxiliary fixed rails 3a.

Röck teaches a pull-out guide assembly for drawers including supporting rails 3 fastened to the side walls 11 of a body of a piece of furniture, pull-out rails 1 fastened to the side walls of the drawer 10, center rails 2 mounted between the pull-out rails 1 and the supporting rails 3, and carriages 4, 5 with bearing supports such as rollers 6 mounted in pull-out rails 1 and supporting rails 3, respectively. Röck, col. 4, ll. 1-15. A pinion 9 rotatably mounted in the center of center rail 2 mates with racks 13 on carriages 4, 5. Röck, col. 4, ll. 28-31. Consequently, the carriage 5 moves automatically upon movement of carriage 4. Röck, col. 4, ll. 32-35. The arrangement permits the drawer to be pulled out of the body of the piece of furniture over its entire depth, while still being anchored in the supporting rails on the side of the body. Röck, abstract.

Appellant admits that three-track pull-out guides with a drawer track, a support track, and a center track, such as the one taught by Röck, are well-known in the art. Br. 4.

Appellant further admits that damping mechanisms, such as the type taught by Tamura, are also well-known in the art for reducing the shock of a drawer moving relative to the body of a piece of furniture. *Id.*

ANALYSIS

Appellant argues the patentability of claims 18, 21-29, and 31-40 together as a group. Thus, in accordance with 37 C.F.R. § 41.37(c)(1)(vii), we select independent claim 18 as the representative claim to decide the

appeal of the rejection of claims 18, 21-29, and 31-40 as unpatentable over Tamura in view of Röck, with dependent claims 21-29 and 31-40 standing or falling with claim 18.

As evidenced by our findings with respect to Tamura, *supra*, Tamura teaches all of the elements of claim 18, with the exception of a center track, and hence the particular relationship of the damping device being operable to dampen relative motion between the *center* track and at least one of the drawer track and the support track. Appellant in essence admits that this is the case.

As noted in our findings, Röck teaches a drawer pull-out guide assembly having three sets of rails, including drawer pull-out rails, supporting rails, and center rails. Röck further teaches that such an arrangement permits the drawer to be pulled out of the body of the piece of furniture over its entire depth, while still being anchored in the supporting rails on the side of the body. These teachings are more than sufficient to have prompted a person of ordinary skill in the art to modify Tamura's drawer mechanism as proposed by the Examiner (Ans. 4) by providing a center track arranged between the drawer track (sliding rail 7) and the support track (fixed rail 3).

In making such a modification, a person of ordinary skill in the art, exercising ordinary common sense and creativity,¹ would simply replace the sliding rails 7 of Tamura with a pair of center rails or tracks and a pair of drawer rails or tracks (i.e., rails or tracks secured to the sides of the drawer).

¹ A conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *See In re Bozek*, 416 F.2d 1385, 1390 (CCPA 1969).

Since such modification would leave only two options for placement of the pins 7b for engaging radial extension 27 of recess 25 of catch 22 of each traveler device 9, namely, on either the center rails or the drawer rails, the selection of either location would have been obvious to a person of ordinary skill in the art. Placement of the pins in either location would result in Tamura's damping elements being configured and arranged so as to damp relative motion between the center rails and the fixed rails, i.e., fixed rails 3 and auxiliary fixed rails 3a, thereby satisfying the claim limitation in contention.² Having said that, however, we further find that a person of ordinary skill in the art would immediately envisage placing the pins on the center rails, the rails engaging Tamura's fixed rails 3, consistent with the arrangement taught by Tamura.

Appellant argues that "the space constraints created by providing a center track in addition to a drawer track and a support track would deter one of ordinary skill in the art from even attempting to modify" Tamura and Röck "so as to dampen relative motion between the center track and at least one of the drawer track and the support track." Br. 6-7. This argument is flawed in that it is grounded on a description of Appellant's own invention, and not the drawer mechanism of Tamura or Röck.³ The space constraints within and between the drawer rails, center rails, and fixed rails 3 in Tamura, as modified, are not an impediment to the positioning of the traveler device 9, or the damping mechanism 12 therein, because, as perhaps best illustrated

² We note, in this regard, that claim 18 does not require that the damping device be mounted on or engaged with the center rail.

³ The drawing Figures A, B, and C appended to the Appeal Brief and discussed by Appellant in support of this argument depict Appellant's invention, not the applied prior art.

in Figure 6 of Tamura, the traveler devices 9 are slidably mounted on auxiliary fixed rails 3a outboard of the engaging features of the sliding rails 7 and fixed rails 3.

For the above reasons, Appellant's arguments do not persuade us the Examiner erred in rejecting claim 18 as unpatentable over Tamura in view of Röck. The rejection of claim 18, and claims 21-29 and 31-40 standing or falling with claim 18, is sustained.

In contesting the rejection of claims 19, 20, and 30 as unpatentable over Tamura in view of Röck and further in view of Migliori, Appellant merely relies on the arguments discussed above with respect to claim 18. Br. 7. For the reasons set forth above, these arguments likewise fail to persuade us of reversible error in this rejection. The rejection of claims 19, 20, and 30 as unpatentable over Tamura in view of Röck and further in view of Migliori is also sustained.

CONCLUSION

The decision of the Examiner to reject claims 18-40 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

vsh

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Application 09/936,518

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